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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,943	03/08/2000	KUBER T. SAMPATH	CIBT-P01-570	7342
28120	7590	12/03/2004	EXAMINER	
ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			ANDRES, JANET L	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/423,943

Applicant(s)

SAMPATH ET AL.

Examiner

Janet L. Andres

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1,3,5,8-28 and 123.Claim(s) withdrawn from consideration: 5, 7, 29, 76.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
JANET ANDRES  
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicant now argues that WO 93/04692 does not teach creation of a local defect. Applicant argues that the creation of a reperfusion injury is not the creation of a local defect because the damage so created is not a "structural disruption" and because it is not a directly created local defect. Applicant's arguments are not found to be persuasive. Myocardial cells are in fact damaged in reperfusion injury; thus the damage is a structural disruption. The method by which the defect was created does not alter the final nature of the defect. Applicant appears to be attempting to distinguish the nature of the resulting defect as being less defined than that taught by Applicant. However, Applicant's specification teaches lung fibrosis models and myocardial infarct models as well as liver injury on pp. 49-51 as well as other models that do not result in a single, defined injury. The Examiner finds no definition of a "local defect" that excludes these models; what Applicant points to is merely a particular model, aimed at evaluating bone, that results in less extensive damage than results from Applicant's other models. Applicant's elected tissue is renal tissue; the Examiner notes that no model is presented for renal damage and thus no model that would distinguish the instant claims from those taught by the prior art is presented.